

City Council Introduction: **Monday**, September 25, 2006  
Public Hearing: **Monday**, October 2, 2006, at **1:30** p.m.

Bill No. 06-175

## **FACTSHEET**

**TITLE:** **CHANGE OF ZONE NO. 06054**, text amendments to Title 27 of the Lincoln Municipal Code, relating to nonstandard uses.

**STAFF RECOMMENDATION:** Approval

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 09/13/06  
Administrative Action: 09/13/06

**RECOMMENDATION:** Approval 9-0 (Strand, Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes').

### **FINDINGS OF FACT:**

1. The main purpose of this proposed text amendment is to address some of the concerns in the past about downzoning and nonstandard uses. This proposal removes the nonstandard label from existing single-family and two-family residences; amends the nonstandard provisions for multi-family; clarifies when lots are considered combined; and deletes "boarding and lodging houses" from the statement of intent in the R-6, R-76 and R-8 districts.
2. The staff recommendation of approval is based on the "Analysis" as set forth on p.2-3, concluding that the proposal is in conformance with the Comprehensive Plan.
3. The minutes of the public hearing before the Planning Commission are found on p.5-6.
4. There was no testimony in opposition.
5. On September 13, 2006, the Planning Commission agreed with the staff recommendation and voted 9-0 to recommend approval.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** September 18, 2006

**REVIEWED BY:** \_\_\_\_\_

**DATE:** September 18, 2006

**REFERENCE NUMBER:** FS\CC\2006\CZ.06054

**LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT**  
**for September 13, 2006 PLANNING COMMISSION MEETING**

**P.A.S.:** Change of Zone No. 06054

**PROPOSAL:** To amend the Sections 27.11.080, 27.13.080, 27.15.080, 27.17.080, 27.19.080, 27.21.080, 27.23.080 and 27.24.080 relating to the R-1, R-2, R-3, R-4, R-5, R-6, R-7, and R-8 zoning districts, respectively, to provide provisions regarding the use of vacant and occupied lots which have less area or width or both less area and width than required by said district regulations; amending Section 27.61.090 to limit the number of dwelling units in a nonstandard multiple dwelling which is enlarged, extended or reconstructed and repealing Sections 27.11.080, 27.13.080, 27.15.080, 27.17.080, 27.19.080, 27.21.080, 27.23.080, 27.24.080 and 27.61.090 of the Lincoln Municipal Code as hitherto existing, and amendment to the statement of intent in Chapters 27.21, 27.23 and 27.24 to delete boarding and lodging houses which are no longer permitted uses in those districts.

**CONCLUSION:** In conformance with the Comprehensive Plan.

**RECOMMENDATION:**

Approval

**GENERAL INFORMATION:**

**ANALYSIS:**

1. The main purpose of this draft text amendment is to address some of the concerns in the past about downzoning and nonstandard uses. A downzoning may mean that some existing homes are now on lots that have a nonstandard lot area, lot width or setbacks. In some cases, an insurance company may require additional insurance on a home loan due to a house being classified as “nonstandard.”
2. However, today the zoning ordinance already contains many provisions to allow nonstandard lots to have single family or two family homes rebuilt on them, even if they are nonstandard. The main part of this proposal would revise the standards to allow existing homes to be rebuilt or vacant lots to be built with a single family home or a two family home – and eliminate their categorization as “nonstandard.”

**Remove Nonstandard Label from Existing Single Family and Two Family Residences**

3. This amendment addresses some concerns of Planning Commission about downzoning creating nonstandard lots. This part will amend Height and Area Regulations in R-1 through R-8 Residential zoning districts to state that when an existing lot is occupied by a single or two family dwelling and has less lot area or width or both it shall not be considered nonstandard.

4. The revision would also permit in the R-2 district an existing two family dwelling with less than the required 10 foot side yard setback to be enlarged, extended or rebuilt as long as a minimum 5 foot side yard setback (or existing setback, whichever is greater) is provided. Also it would state that an existing two family dwelling with at least a 5 foot side yard setback will not be considered as nonstandard. A similar provision is proposed for R-1 as long as a 10 foot side yard setback is maintained.

#### **Amend Nonstandard Provisions for Multi-Family**

5. This part was also requested by the Planning Commission as part of their "Downzoning Report." It amends R-1, R-2, R-3 and R-4 Residential zoning districts to clarify that multiple-family residential uses made nonstandard through a downzoning, if destroyed, retain the licensed number of units they had at the time the use was destroyed.
6. It also revises the ordinance to specify that "grandfathering" of multiple-family units that become nonstandard based on the date of the zoning change (downzoning) should apply to all multiple-family dwellings licensed at the time of the change, not just those built prior to May, 1978.

#### **When are Lots Considered Combined**

7. The revised text was requested by City Attorney to clarify previous interpretations regarding adjacent vacant lots under the same ownership for R-1 through R-8. This would amend Height and Area Regulations in R-1, R-2, R-3, R-4 to clarify that when a vacant lot has less lot area or lot width or both, then it may be used for a single family as long as the property owner of that lot didn't also own an adjacent vacant lot. When two vacant lots, with less lot area or width or both, are adjacent and owned by the same owner they are considered as one premise.
8. In addition in the R-4 this provision would extend to lot width to permit a two family residence on a lot, as long it is not owned in common with an adjacent vacant lot. In R-5, R-6, R-7 and R-8 similar provision will be clarified to permit a lot with less lot area or width or both to be used for single family, two family or any nondwelling use permitted in the district, as long it is not owned in common with an adjacent vacant lot.

#### **Statement of Intent Update**

9. As long as the R-6, R-7 and R-8 were being revised, an amendment was included to the statement of intent to delete boarding and lodging houses which are no longer permitted uses in those districts. Change of Zone #3186 approved on July 26, 1999 eliminated "boarding and lodging houses" as a permitted use in the R-6, R-7 and R-8 districts. However, the amendment did not to revise the statement of intent, which has caused confusion on some occasions.

Prepared by:

Stephen Henrichsen, AICP

[shenrichsen@lincoln.ne.gov](mailto:shenrichsen@lincoln.ne.gov)

Planning Department, (402) 441-6374

**Date:** September 5, 2006

**APPLICANT:** Marvin Krout, Director of Planning  
Lincoln/ Lancaster County Planning Department  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

## CHANGE OF ZONE NO. 06054

### **PUBLIC HEARING BEFORE PLANNING COMMISSION:**

September 13, 2006

Members present: Strand, Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson.

Ex Parte Communications: None.

Staff presentation: Stephen Henrichsen of the Planning staff presented the proposed text amendment. The main genesis for this proposal was the discussion by the Planning Commission relating to downzoning requests. This attempts to address concerns in terms of properties being listed as nonstandard as a result of downzoning.

The first part of the amendment relates to labeling of existing single family and two-family residences, e.g:

If an existing lot or tract lawfully occupied by a single-family or two-family dwelling on the effective date of this title or on the effective date of a change in district boundaries from another zoning district to this district has less area or width or both less area and width than herein required, such lot or tract shall not be considered nonstandard due to such condition.

This addresses some of the concerns about an existing nonstandard lot. This clarifies that it is not nonstandard. If this amendment is adopted by the City Council, the staff would then work with realtors, appraisers, and lenders to make sure they are all aware of this amendment.

The proposed amendment goes one step further, e.g.:

If an existing lot or tract is lawfully occupied by a two-family dwelling which has a side yard setback of less than ten feet and said use becomes nonstandard through a change in district boundaries from another zoning district to this district, the two-family dwelling may be enlarged, extended or reconstructed as long as the existing side yard or a five-foot side yard, whichever is greater, is provided.

The proposed amendment addresses another issue which came out of the downzone recommendations in regard to multi-family uses in R-1 through R-4. This amendment provides that if multiple-family residential uses made nonstandard through a downzoning are destroyed, the owner may retain the licensed number of units they had at the time the use was destroyed.

The proposed amendment also clarifies when lots are considered combined and when they are not.

This proposal also deletes "boarding and lodging houses" in the statement of intent, which should have been deleted six years ago.

Strand asked Henrichsen to define the change of two lots side by side, and when you can combine

them and make it one lot. Henrichsen referred to page 8 of the staff report, line 22:

If such vacant lot or tract comes under common ownership with an abutting lot or tract, such vacant lot or tract may continue to be used for a single-family dwelling provided said abutting lot or tract was occupied by a dwelling unit on the date such vacant lot or tract and the abutting lot or tract came under common ownership.

If such vacant lot or tract comes under common ownership with an abutting vacant lot or tract which has less area or width or both less area and width than herein required, such lots and tracts shall be merged together and constitute a single premise.

If the vacant lot has not been owned in common with an adjacent property at any time since 1953, it can be used for single family. If it has been under common ownership but one of those lots had a dwelling unit on it, the vacant lot could still be used for another dwelling unit. If both of the abutting lots have been vacant, then they shall be considered merged together and could be used for a single dwelling.

Strand suggested the scenario of two houses side by side on normal size lots – both in tear-down condition. If someone wants to tear them down and construct a duplex, would that still be allowed? Henrichsen stated that if those two lots together had enough lot area for a duplex, it could still be used for the duplex.

Strand noted that if a multi-unit burned down with five units, they can rebuild five licensed units. What if the zoning allows for six units? Henrichsen pointed out that R-1 through R-4 does not allow six units. If R-6 goes to R-4 and there were three units when it was zoned R-6, they could not go to a four-plex, which they might have been able to do under the R-6 zoning.

There was no testimony in opposition.

**ACTION BY PLANNING COMMISSION:**

September 13, 2006

Carroll moved approval, seconded by Esseks.

Strand thanked staff for allowing the downzone committee to meet and work on this because there were some loops and holes that needed to be fine-tuned.

Motion for approval carried 9-0: Strand, Cornelius, Sunderman, Taylor, Larson, Krieser, Carroll, Esseks and Carlson voting 'yes'. This is a recommendation to the City Council.